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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 ROGER SHAHAN,

12 Plaintiff,

13 vs.

14  
15 DEUTSCHE BANK NATIONAL TRUST  
16 NATIONAL TRUST COMPANY; CAL-  
17 WESTERN RECONVEYANCE  
18 CORPORATION; NATIONSTAR  
19 MORTGAGE LLC; AMERICAN  
20 SERVICING COMPANY, and DOES 1  
through 50, inclusive,

Defendant.

CASE NO. 12-CV-1350 JLS (NLS)

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS**

(ECF No. 15)

21 On June 6, 2012, Plaintiff Roger Shahan ("Plaintiff") filed a complaint against Defendants  
22 for wrongful foreclosure, breach of contract, violation of California Civil Code §§ 2932.5, 2923.5,  
23 2923.6, 2932.5, and 2934, fraud-intentional, fraud-concealment, negligence, violation of Real  
24 Estate Settlement Procedures Act ("RESPA"), violation of California Financial Code § 50505,  
25 unfair debt collection practices in violation of the Rosenthal Act, and violation of California's  
26 Business & Professions Code § 17200. (Compl., ECF No.1.) On June 27, 2012, Defendants  
27 America's Servicing Company and Deutsche Bank National Trust Company ("Defendants") filed  
28 a Motion to Dismiss Plaintiff's Complaint or Alternatively, Motion for a More Definite Statement.

1 (Mot. to Dismiss, ECF No. 15.)

2 On June 28, 2012, the Court set a briefing schedule on Defendants' motion. (ECF No. 16.)  
 3 Pursuant to the briefing schedule, Plaintiff's opposition to Defendants' motion was due by July 23,  
 4 2012. On July 30, 2012, the Court granted Plaintiff's *ex parte* motion<sup>1</sup> to extend Plaintiff's time to  
 5 respond to August 2, 2012 and vacated the hearing set for the motion on August 9, 2012. (ECF  
 6 No. 18.) Since then, the Court has received no opposition—timely or untimely—to Defendants'  
 7 motion. On August 9, 2012, Defendants filed a reply indicating that Plaintiff "has failed to file an  
 8 Opposition." (Reply in Supp., ECF No. 19.) As of the date of this Order, Plaintiff has failed to  
 9 oppose Defendants' motion.

10 "The Ninth Circuit has held a district court may properly grant an unopposed motion to  
 11 dismiss pursuant to a local rule where the local rule permits, but does not require, the granting of a  
 12 motion for failure to respond." *Navarro v. Greenlight Fin. Servs.*, No. 10cv1631, 2010 U.S. Dist.  
 13 LEXIS 111018, at \*3–4 (S.D. Cal. Oct. 19, 2010) (citing *Ghazali v. Moran*, 46 F.3d 52, 53 (9th  
 14 Cir. 1995)). Under Civil Local Rule 7.1.f.3.c, "[i]f an opposing party fails to file the papers in the  
 15 manner requested by Civil Local Rule 7.1.e.2, that failure may constitute a consent to the granting  
 16 of a motion or other request for ruling by the court." Rule 7.1(e)(2) requires a party opposing a  
 17 motion to file an opposition or statement of non-opposition no later than fourteen days prior to the  
 18 noticed hearing, unless otherwise provided by court order.

19 Although public policy favors disposition of cases on their merits, *see, e.g., Hernandez v.*  
 20 *City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998), "a case cannot move forward toward  
 21 resolution on the merits when the plaintiff fails to defend his or her complaint against a Rule  
 22 12(b)(6) motion," *Navarro*, 2010 WL 4117444, at \*2. "Thus, this policy lends little support to a  
 23 party whose responsibility is to move a case toward disposition on the merits but whose conduct  
 24 impedes or completely prevents progress in that direction." *Id.* The public's interest in  
 25 expeditious resolution of litigation, the Court's need to manage its docket, and the potential

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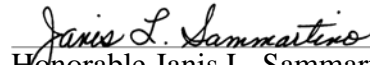
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 28 <sup>1</sup>The Court notes that Plaintiff's *ex parte* Request to Enlarge Time to File Opposition to  
 Defendant's [sic] Motion to Dismiss, filed on July 24, 2012, was filed after the deadline for Plaintiff's  
 opposition had already expired. (ECF No. 17.)

1 prejudice to Defendants all weigh in favor of dismissal. *See Ghazali*, 46 F.3d at 53. The Court  
2 finds that dismissal of this action pursuant to Civil Local Rule 7.1(f)(3)(c) serves to vindicate these  
3 interests given that several cases on similar footing are currently pending before the Court and  
4 awaiting resolution.

5 Defendants requests dismissal of Plaintiff's claims without leave to amend. (Mot. to  
6 Dismiss, ECF No. 15-1 at 2.) Nevertheless, the Court considers dismissal with prejudice  
7 premature. Accordingly, the Court **GRANTS** Defendants' motion to dismiss and **DISMISSES**  
8 Plaintiff's claims against Defendants **WITHOUT PREJUDICE**. If Plaintiff wishes to continue  
9 litigating this case against Defendants, he **SHALL FILE** an amended complaint addressing the  
10 deficiencies raised in Defendants' motions within 14 days of the date that this Order is  
11 electronically docketed.

12 **IT IS SO ORDERED.**

13 DATED: November 5, 2012

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15 Honorable Janis L. Sammartino  
16 United States District Judge  
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